



5. Admit Paragraph 5 of the Counterclaims.
6. Admit Paragraph 6 of the Counterclaims.
7. Admit Paragraph 7 of the Counterclaims.
8. Admit Paragraph 8 of the Counterclaims.
9. Admit the first two sentences of Paragraph 9 of the Counterclaims and deny the third sentence.
10. Deny the allegations of Paragraph 10 of the Counterclaims except admit that the “Courage.B” stores in question were opened within the time period alleged.
11. Deny the allegations of Paragraph 11 of the Counterclaims except admit that trademark registrations were applied for in Gooberry’s name.
12. Admit Paragraph 12 of the Counterclaims.
13. Deny Paragraph 13 of the Counterclaims.
14. Deny Paragraph 14 of the Counterclaims except admit the existence of a customer information database.
15. Deny Paragraph 15 of the Counterclaims except admit that the database is housed by a third party vendor and is password protected.
16. Deny Paragraph 16 of the Counterclaims except admit that Olivier, through OGI, has been and is (among other things) a wholesaler of women’s apparel and accessories.
17. Deny Paragraph 17 of the Counterclaims except admit the existence of a retail clothing store in Scarsdale, New York which is owned of record by Defendant NOG, a corporation in which Olivier and Noemi each own 50% of the equity.
18. State that they lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 of the Counterclaims.

19. Deny Paragraph 19 of the Counterclaims except admit that Olivier had access to Gooberry's corporate bank and credit card accounts.

20. Deny Paragraph 20 of the Counterclaims.

21. Deny Paragraph 21 of the Counterclaims except admit that Olivier worked out of the office in Long Island City occupied by the parties' joint venture, and that OGI sold Courage.B products.

22. Deny Paragraph 22 of the Counterclaims except admit that Olivier was informed in general about business conducted by Gooberry as a part of the parties' joint venture.

23. Deny Paragraph 23 of the Counterclaims except admit that Olivier had access to Gooberry's books and records

24. Deny Paragraph 24 of the Counterclaims.

25. Deny Paragraph 25 of the Counterclaims.

26. Deny Paragraph 26 of the Counterclaims except admit that Sacha was hired in 2011, was on Gooberry's payroll, and had access to computer records and systems including one or more databases.

27. Deny Paragraph 27 of the Counterclaims except admit that Sacha worked on the design and content of the website.

28. Deny Paragraph 28 of the Counterclaims except admit that Sacha worked with the database and sent e-mail and other notifications to customers of the Courage.B joint venture.

29. Deny Paragraph 29 of the Counterclaims and state that Olivier filed for a divorce on or about May 10, 2012.

30. Deny Paragraph 30 of the Counterclaims except admit that Gooberry purported to terminate Olivier, but state that this occurred before any divorce papers were filed.

31. Deny Paragraph 31 of the Counterclaims.

32. Deny Paragraph 32 of the Counterclaims.

33. Deny Paragraph 33 of the Counterclaims.

34. Deny Paragraph 34 of the Counterclaims.

35. Deny Paragraph 35 of the Counterclaims.

36. Deny Paragraph 36 of the Counterclaims.

37. Deny Paragraph 37 of the Counterclaims.

38. Deny Paragraph 38 of the Counterclaims except admit that prior to being terminated Sacha copied certain information from the computer terminal that he had been using in connection with his employment but deny that this information was proprietary to Gooberry.

39. Deny Paragraph 39 of the Counterclaims except admit that Sacha temporarily removed from the joint venture offices an external hard drive that contained some of the information specified, but deny that this information was proprietary to Gooberry.

40. Deny Paragraph 40 of the Counterclaims except admit that Noemi sought the return of the hard drive in question.

41. Deny Paragraph 41 of the Counterclaims except admit that within days Sacha returned the hard drive after copying some of the information contained thereon.

42. Deny Paragraph 42 of the Counterclaims on information and belief.

43. Deny Paragraph 43 of the Counterclaims except admit that OGI created a new website.

44. Deny Paragraph 44 of the Counterclaims.

45. State that they lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 45 of the Counterclaims.

46. Deny Paragraph 46 of the Counterclaims except state that they lack knowledge or information sufficient to form a belief as to the truth or falsity of its allegations about conversations allegedly engaged in by Gooberry employees.

47. State that they lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 47 of the Counterclaims except deny that Sacha stole anything for Plaintiffs' benefit or otherwise.

48. Deny Paragraph 48 of the Counterclaims on information and belief.

49. State that they lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 49 of the Counterclaims.

50. Deny Paragraph 50 of the Counterclaims.

51. Repeat and reallege Paragraphs 1 through 50 herein.

52. Deny Paragraph 52 of the Counterclaims.

53. Deny Paragraph 53 of the Counterclaims.

54. Deny Paragraph 54 of the Counterclaims.

55. Repeat and reallege Paragraphs 1 through 54 herein.

56. Deny Paragraph 56 of the Counterclaims.

57. Deny Paragraph 57 of the Counterclaims.

58. Deny Paragraph 58 of the Counterclaims.

59. Repeat and reallege Paragraphs 1 through 58 herein.

60. Deny Paragraph 60 of the Counterclaims.

61. Deny Paragraph 61 of the Counterclaims.

62. Deny Paragraph 62 of the Counterclaims.

63. Repeat and reallege Paragraphs 1 through 62 herein.

64. Deny Paragraph 64 of the Counterclaims.
65. Deny Paragraph 65 of the Counterclaims.
66. Deny Paragraph 66 of the Counterclaims.
67. Repeat and reallege Paragraphs 1 through 66 herein.
68. Deny Paragraph 68 of the Counterclaims.
69. Deny Paragraph 69 of the Counterclaims.
70. Deny Paragraph 70 of the Counterclaims.
71. Deny Paragraph 71 of the Counterclaims.
72. Deny Paragraph 72 of the Counterclaims.
73. Deny Paragraph 73 of the Counterclaims.
74. Repeat and reallege Paragraphs 1 through 73 herein.
75. Deny Paragraph 75 of the Counterclaims.
76. Deny Paragraph 76 of the Counterclaims.
77. Repeat and reallege Paragraphs 1 through 76 herein.
78. Deny Paragraph 78 of the Counterclaims.
79. Deny Paragraph 79 of the Counterclaims.
80. Deny Paragraph 80 of the Counterclaims.
81. Deny Paragraph 81 of the Counterclaims.
82. Deny Paragraph 82 of the Counterclaims.
83. Deny Paragraph 83 of the Counterclaims.
84. Deny Paragraph 84 of the Counterclaims.

## AFFIRMATIVE DEFENSES

85. The Counterclaims, and each of them, fail to state a claim upon which relief can be granted.

86. The Counterclaims, and each of them, are barred in whole or in part by virtue of the doctrine of estoppel.

87. The Counterclaims, and each of them, are barred in whole or in part by virtue of Gooberry's unclean hands.

WHEREFORE, Plaintiffs respectfully demand judgment dismissing the Counterclaims.

Dated: White Plains, New York  
January 3, 2013

YANKWITT & MCGUIRE, LLP

By: \_\_\_\_\_/s/

Harold F. McGuire, Jr., Esq.

Russell M. Yankwitt, Esq.

Daniel F. McGuire, Esq.

140 Grand Street, Suite 501

White Plains, New York 10601

Telephone: (914) 686-1500

Facsimile: (914) 801-5930

## hmcguire@yankwitt.com

*Attorneys for Plaintiffs and Third Party Defendant*